

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

LORINDA JANINE PAYNE

§
§
§
§
§

CRIMINAL NO. 6:02-CR-89-002

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On June 4, 2007, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant, Lorinda Janine Payne. The government was represented by Jim Middleton for Mary Ann Cozby, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by the court-appointed attorney, Matt Flanery.

Defendant originally pleaded guilty to the offense of Possession with Intent to Distribute Methamphetamine, a Class B felony. The offense carried a statutory maximum imprisonment term of 40 years. The United States Sentencing Guideline range, based on a total offense level of 21 and a criminal history category of I, was 37 to 46 months. On September 22, 2003, U.S. District Judge Leonard Davis sentenced Defendant to 37 months imprisonment followed by a term of three years supervised release, subject to the standard conditions of release, plus special conditions to include financial disclosure, drug treatment, and mental health treatment. On March 24, 2006, Defendant completed the term of imprisonment and began the term of supervised release.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from: committing another federal, state or local crime, and from unlawfully using a controlled substance. As standard conditions of supervision, Defendant was required to, among other things, submit to one drug test within 15 days of release from imprisonment or placement on probation and at least two

periodic drug tests thereafter, as directed by the probation officer. In its petition, the government alleges that Defendant violated her condition of supervised release by submitting urine specimens which tested positive for methamphetamine on or about March 2, 2007, and March 14, 2007; and submitting a urine specimen which tested positive for marijuana on March 30, 2007.

If the Court finds by a preponderance of the evidence that Defendant committed this violation, a statutory sentence of no more than three years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). Section 7B1.1(b) of the Sentencing Guidelines indicates that where there is more than one violation of the conditions of supervision, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade. Pursuant to Section 7B1.1(a) of the Sentencing Guidelines, violating a condition of supervision by possessing a controlled substance, in that she submitted urine specimens that tested positive for methamphetamine on two occasions, would constitute a Grade B violation, for which the Court shall revoke Defendant's term of supervised release in favor of a term of imprisonment. U.S.S.G. § 7B3.1(a)(1). Considering Defendant's criminal history category of I, the Guideline imprisonment range for a Grade B violation is 4 to 10 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to violating a standard condition of supervision by possessing a controlled substance in that she submitted urine specimens that tested positive for methamphetamine. In exchange, the government agreed to recommend that Defendant serve 6 months in prison with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court RECOMMENDS that Defendant, Lorinda Janine Payne, be committed to the custody of the Bureau

of Prisons for a term of imprisonment of 6 months with no supervised release to follow. The Court further RECOMMENDS that Defendant be incarcerated at FCI Carswell.

The parties have waived their right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 6th day of June, 2007.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE